

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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NEW ENGLAND CARPENTERS HEALTH )  
BENEFITS FUND, PIRELLI ARMSTRONG )  
RETIREE MEDICAL BENEFITS TRUST; )  
TEAMSTERS HEALTH & WELFARE FUND )  
OF PHILADELPHIA AND VICINITY; )  
PHILADELPHIA FEDERATION OF )  
TEACHERS HEALTH AND WELFARE )  
FUND; DISTRICT COUNCIL 37, AFSCME - )  
HEALTH & SECURITY PLAN; JUNE )  
SWAN; MAUREEN COWIE and BERNARD )  
GORTER, )

Plaintiffs, )

v. )

FIRST DATABANK, INC., a Missouri )  
corporation; and McKESSON )  
CORPORATION, a Delaware corporation, )

Defendants. )

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C.A. No. 1:05-CV-11148-PBS

**PLAINTIFFS' RESPONSE TO MCKESSON'S FIRST SUPPLEMENT  
OF THE CLASS CERTIFICATION RECORD**

At the May 22 hearing on Plaintiffs' motion to certify the class the Court ruled that it would reach its decision based on the record before it.<sup>1</sup> However, in recognition that the discovery period had not yet closed, the Court authorized each of the parties to file a motion to supplement the record, as needed, to provide the Court with new evidence that bears on class certification. The Court clearly limited each party to a single supplement of no more than three pages to be filed before July 31:

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<sup>1</sup> Transcript of May 22, 2007 Motion/Status Hearing at 63:25 – 64:1, attached for the Court's convenience as Exhibit A.

THE COURT: And if some new information came in that bears on this, I suppose what you should do is a motion to supplement the class certification record. It may be like a three-page brief on why it matters.

\* \* \*

MS. SCHECHTER: Your Honor, does that mean we should look at the end of July as our cutoff for sending you information?

THE COURT: I think, realistically.

MS. SCHECHTER: Okay.<sup>2</sup>

With the filing of its First Supplement of the Class Certification Record, McKesson announced its intent to file “a second supplement” between now and the close of discovery.<sup>3</sup> Because McKesson is only entitled to a single supplement, Plaintiffs object to any further attempts by McKesson to supplement the record and will move to strike any further supplements, as necessary.

DATED: July 9, 2007

By /s/ Steve W. Berman

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<sup>2</sup> *Id.* at 64:2 – 65:8.

<sup>3</sup> McKesson Corporation’s First Supplement of the Class Certification Record at 1.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on July 9, 2007.

/s/ Steve W. Berman  
Steve W. Berman

## **Exhibit A**

1     Going all through the fall, is that it?

2             MS. SCHECHTER: Right now the plaintiffs' expert  
3     report is due July 1, although discovery closes July 31.

4             THE COURT: And just responding to what you had  
5     said, it sounds like you are about to depose two more PBMs.  
6     So how should we handle new information that may come in on  
7     this precise point?

8             MS. SCHECHTER: We would be happy to put in a  
9     supplemental filing if your Honor --

10            THE COURT: I don't want to see you all again, just  
11     because I don't want to have the expense of having you all  
12     fly in here, but you both might get information that you  
13     might want.

14            MS. SCHECHTER: Well, in the last two weeks we've  
15     received many documents from third-party payors, some of  
16     which I put in the slide presentation that we received after  
17     our surreply --

18            THE COURT: When's your last deposition?

19            MS. SCHECHTER: They haven't been scheduled because  
20     Express-Scripts --

21            THE COURT: What did we say the cutoff was?

22            MS. SCHECHTER: July 31, so it would probably make  
23     sense to then put the experts after that, and then --

24            THE COURT: I'm just simply saying any new  
25     information that came in. Well, we're going to go based on

1 this record, so if we issue a decision beforehand, we do.  
2 And if some new information came in that bears on this, I  
3 suppose what you should do is a motion to supplement the  
4 class certification record. It may be like a three-page  
5 brief on why it matters.

6 MS. SCHECHTER: Okay, and at a minimum, we'd like  
7 to put in the slides that we put in today, so we'll do that.

8 THE COURT: Yes, just not another brief.

9 MS. SCHECHTER: I understand. Just the documents.

10 THE COURT: Just the documents and what issue it  
11 goes to, three pages, not like a whole new thing. I'd give  
12 you the chance to do it too if you -- do you have more  
13 depositions?

14 MR. BERMAN: Yes, we do, your Honor. I mean, we're  
15 attending the same depositions, and we're going to be trying  
16 to get the evidence in our favor just like they are.

17 THE COURT: So I'm just trying to figure out. As a  
18 logistical matter, it's a very serious motion for class cert,  
19 and it takes me a while, and I have a few other things I need  
20 to write. So I think it makes sense that at least until I've  
21 written it, you should be supplementing if something is  
22 relevant, but not with a slew of new briefs, okay? What I'm  
23 hoping to do is get this out by the end of the summer.  
24 That's sort of my ideal time period.

25 MR. BERMAN: You think so?

1 THE COURT: Huh?

2 MR. BERMAN: You think so?

3 THE COURT: It sure is.

4 MS. SCHECHTER: Your Honor, does that mean we  
5 should look at the end of July as our cutoff for sending you  
6 information?

7 THE COURT: I think, realistically.

8 MS. SCHECHTER: Okay.

9 THE COURT: I think, realistically, that's right.  
10 Okay? So to the extent that -- I don't want you to have to  
11 spend the money for expedited deposition transcripts, so I  
12 would just try and schedule around that.

13 MS. SCHECHTER: We appreciate that, your Honor.

14 THE COURT: Okay. All right, that's it. Great.

15 THE CLERK: Court is in recess.

16 (Adjourned, 3:25 p.m.)

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